der the circumstances it could by exercising ordinary care on the part of its motorman have avoided the accident, the plaintiff could recover.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 700.]

3. Carriers (§ 347 (1)*)—Whether Ordinary Care Would Have Averted Injury to Person at Station to Meet Incoming Passenger Notwithstanding Contributory Negligence Held for the Jury.—In a suit for injury to a person who went to an electric railway station to meet an incoming passenger, evidence held to present an issue of fact for the jury as to whether a motorman by the exercise of ordinary care could have averted the injury, notwithstanding his contributory negligence in placing himself in a position of danger from passing cars.

[Ed. Not .—For other cases, see 2 Va-W. Va. Enc. Dig. 725.]

4. Negligence (§ 121 (1)*)—Burden on Negligent Plaintiff to Show Defendant Could Have Avoided Accident.—The burden is on a negligent plaintiff suing for personal injuries to show by a preponderance of the evidence that there was a clear opportunity for defendant to save him from his own negligence.

[Ed. Note.—For other cases, see 2 Va-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Prince George County.

Action by W. T. Meanley against Petersburg, Hopewell & City Point Railway Company. From a judgment for defendant, plaintiff brings error. Reversed.

R. E. Byrd, of Richmond, *W. L. Devany,* of Norfolk, and *Fulton & Wicker,* of Richmond, for plaintiff in error.

Zimmer & Syme, of Petersburg, for defendant in error.

HAYNES CHEMICAL CORPORATION *v.* STAPLES & STAPLES, Inc.

June 15. 1922.

[112 S. E. 802-803.]

1. Work and Labor (§ 4 (2)*)—Services Rendered at Another's Request Imply Promise to Pay.—Where one renders services for another at the latter's request the law, in the absence of express agreement, implies a promise to pay what those services are reasonably worth, unless it can be reasonably inferred that the services were to be without compensation.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 303.]

2. Work and Labor (§ 4 (2)*)—Promise to Pay Reasonable Amount Implied for Preparing Advertising Plan at Defendant's Request.—An agency prepared an advertising plan under the assurance of a representative of a company that his people would give the plan consid-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

eration, which meant nothing less than consideration of the plan upon its merits by the officers of the company, but the officers never gave the agency an opportunity to present its plan, and, without seeing it and without regard to its merits, gave the contract to another agency. In view of the company's conduct it could not be inferred that the services of the agency were to be rendered without compensation, and the law implied a promise to pay any reasonable amount expended by the agency in complying with the request to prepare the plan.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 303.]

3. Work and Labor (§ 9*)—Party Cannot Escape Obligation of Mutual Contract.—A party cannot request another to pay out money or perform services for him upon his agreement to render certain services for that person, and then, after the money is paid or the services performed, refuse to keep his agreement and escape liability for the amount of money or labor so expended at his request.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 303.]

4. Contracts (§ 67*)—Implied Promise to Pay for Services to Be Performed Basis of Express Promise after Performance.—The implied promise by a company to pay an amount expended by an agency in preparing an advertising plan, the company having given the plan no consideration, was a consideration for the subsequent express promise to compensate the agency for expenses incurred.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 347.]

5. Corporations (§ 406 (1)*)—Contract Made by Director within Charter Powers with Consent of General Manager and Another Director Held Binding.—Where the treasurer and director of a corporation made a contract with an advertising agency which was within its charter powers, and was made with the knowledge and consent of the general manager in active charge and another director, who with the treasurer constituted three of the five stockholders of the corporation, the other two being nonresidents, the contract was binding on the company.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 333.]

6. Corporations (§ 425 (3)*)—Where Contract by Treasurer Was Irregular as Being Made Without Authority, but Was Made with Knowledge and Consent of Other Officers, Corporation Held Estopped to Rely on the Irregularity.—Where a contract for the furnishing of plans by an advertising agency, entered into by the treasurer director of the corporation without authority, but was within the charter powers and was made with the knowledge and consent of the vice president and general manager and another director, who with the treasurer constituted three of the five stockholders of the corporation, the others being nonresidents, those who governed the corporation waived the irregularity in making the contract, and the corpora-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tion was estopped to rely thereon as a defense to the agency's action for expense incurred in preparing the plans based on an implied promise to pay the agency therefor.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 637.]

Error to Law and Equity Court of City of Richmond.

Action by Staples & Staples, Incorporated, against the Haynes Chemical Corporation. From judgment for plaintiff, defendant brings error. Affirmed.

Williams & Mullen and *Guy B. Hazelgrove,* all of Richmond, for plaintiff in error.

R. Grayson Dashiell, of Richmond, for defendant in error.

SEYMOUR et al. *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 806.]

1. Judgment (§ 751*)—Acquittal on Evidence of Conspiracy to Rob, though Used at a Former Trial for a Homicide, Not Res Judicata at Trial for a Second Homicide.—In a murder prosecution, evidence of robbery or attempted robbery and a conspiracy to commit robbery was admissible, notwithstanding that, at a previous trial for murder of another upon substantially the same evidence, each issue was involved and submitted and was decided in favor of defendants.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 348.]

2. Judgment (§ 751*)—Same Evidence Admissible on Successive Trials for Distinct, but Related, Offenses.—There is no constitutional or statutory guaranty that evidence offered upon the trial of an accused for an offense of which he was either convicted or acquitted may not thereafter be offered to prove a distinct, but related, offense.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 308.]

3. Criminal Law (§ 1166½ (6)*)—Where a Fair Jury Selected, Rejection of Veniremen Not Error.—In a criminal prosecution, where a fair jury was selected, defendant cannot complain that other fair jurors were not sworn to try his case.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 11.]

4. Criminal Law (§ 1169 (5)*)—Admission of Evidence of Conversation between Conspirators after Homicide Harmless Where Court Limited Its Effect.—In a murder prosecution, where evidence relating to a conversation between some of the alleged conspirators on the morning after the homicide was admitted, but the court instructed that it could not be considered except as against those of the accused who were present, an assignment of error was without merit.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.